

MINUTES

**MONTANA SENATE
58th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON ENERGY AND TELECOMMUNICATIONS

Call to Order: By **CHAIRMAN ROYAL JOHNSON**, on February 25, 2003
at 3:50 P.M., in Room 317-C Capitol.

ROLL CALL

Members Present:

Sen. Royal Johnson, Chairman (R)
Sen. Corey Stapleton, Vice Chairman (R)
Sen. Bea McCarthy (D)
Sen. Walter McNutt (R)
Sen. Bob Story Jr. (R)
Sen. Mike Taylor (R)
Sen. Ken Toole (D)
Sen. Gary L. Perry (R)

Members Excused: Sen. Don Ryan (D)
Sen. Emily Stonington (D)

Members Absent: None.

Staff Present: Todd Everts, Legislative Services Division
Marion Mood, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted:

Executive Action: SB 272; SB386; SB 387

EXECUTIVE ACTION ON SB 272

Motion: SEN. TOOLE moved that SB 272 DO PASS.

Discussion:

SEN. TOOLE, SD 27, HELENA, refreshed the committee's memory and stated this bill asked the default supplier to provide its customers with a range of options, including market price, renewable resource, and cost based products; he added this was also contained in HB 509. **SEN. BEA MCCARTHY, SD 29, ANACONDA**, mentioned a note containing a proposed amendment for line 25 of the bill but she did not remember who had given it to her; **SEN. TOOLE** thought it came from **Debbie Smith** who had testified in favor of the bill at the hearing. He said she did not want to include any renewable resources which were already being offered but he did not agree with the amendment because it was already included in his bill which specified "new" renewable energy resources. **SEN. COREY STAPLETON, SD 10, BILLINGS**, stated this would not prevent future mechanisms for using the default supplier as the supplier of last resort. **SEN. TOOLE** maintained the opposite was true; if this was required within the default supply, customers would get used to having a choice of products, and it would not have any effect on people's ability to leave the default supply.

SEN. GARY PERRY, SD 16, MANHATTAN, joined the committee, and **CHAIRMAN ROYAL JOHNSON, SD 5, BILLINGS**, filled him in on the proceedings. **SEN. MIKE TAYLOR, SD 37, PROCTOR**, referred to an earlier hand-out by **Commissioner Bob Rowe, PSC**, which stated the commission already requires this of the default supplier. **SEN. TOOLE** identified it as the LC version of what is now HB 509 to which he had referred earlier. He reiterated he wanted this bill to stand on its own because no one could anticipate whether this consensus bill, HB 509, would pass in its entirety. **SEN. TAYLOR** addressed a perceived conflict in that the bill required choice in service options by the default supplier and, at the same time, allowed the PSC to limit choice. **SEN. TOOLE** stressed it was not his intent to limit choice; he merely wanted to set limitations on the number of times a small customer could switch within a year's time because of the cost of the transaction and in the interest of efficiency. **SEN. TAYLOR** contended he already had the right to switch to green power without this bill. **SEN. TOOLE** pointed out that he could, though outside of the default supply; this bill would allow him to switch within the default supply. **SEN. STAPLETON** wondered how he intended to ensure only those customers who chose the higher priced "green power" products would be charged the premium within the default supply, and not all of the customers. **SEN. TOOLE** replied it was his understanding the commission would make sure this did not happen. **SEN. STAPLETON** asked if the choice included nuclear power, and **SEN. TOOLE** said it could if someone was to offer it through the default supplier.

Vote: Motion carried 9-1 with MCNUTT voting no on a Roll Call
Vote. SEN. STONINGTON and SEN. RYAN voted by proxy.

EXECUTIVE ACTION ON SB 386

SEN. TOOLE had to present a bill elsewhere and left his proxy with SEN. MCCARTHY. SEN. RYAN joined the committee.

Motion/Vote: SEN. STORY moved that SB 386 DO PASS. Motion carried unanimously.

EXECUTIVE ACTION ON SB 387

Motion: SEN. STORY moved that SB 387 DO PASS.

Discussion:

Todd Everts introduced Amendment SB038701.alh, **EXHIBIT**(ens42a01), and explained it clarifies how basic telephone service, other than mobile, is sourced for taxing purposes, and who pays the tax; he stressed it did not affect the tax per se. SEN. McNUTT, SD 50, SIDNEY, asked Cory Swanson, AT&T, for further explanation. Mr. Swanson stated the bill itself was about the Mobile Sourcing Act, and it addressed the problem of cell phones crossing jurisdictions, as in someone who has a calling plan in Montana making calls from Colorado; this posed the question of who would collect the excise tax which the bill mandates. The amendment states land line telephones are governed by the same rules, and it applies to calling cards as well as collect calls made from pay phones. He added this was part of a nationwide effort called the "streamline sales tax project"; it does not fully apply to Montana because of the lack of a sales tax, but the provisions with regard to the telecommunications excise tax do apply. He went on to say AT&T as well as other large companies already collect taxes this way, adding it was beneficial to enact this law because it brought uniformity to the industry. CHAIRMAN JOHNSON asked Mr. Swanson whether he and his company helped craft the original bill, recalling he had testified in favor of SB 387 without the amendment. Mr. Swanson explained AT&T's part of the bill was the amendment; they had added the provision to include land line telephones.

Substitute Motion: SEN. RYAN moved that AMENDMENT SB 038701.ALH BE ADOPTED.

Discussion:

SEN. DON RYAN, SD 22, GREAT FALLS, wondered, since many people were using prepaid phone cards for their long distance calls, how those were being taxed; he named one brand which shows up as originating from Denver on his Caller ID and asked if Colorado collected the excise tax in that case. **Mr. Swanson** replied there were two different kinds of prepaid cards; one was the \$10 card one could purchase at a gas station, and since it was impossible to track the user's primary address, these cards were taxed at the time of purchase, no matter from which location or to which location the calls are made. In the case of a calling card for which the user has an account, by using his credit card for purchase of minutes, the jurisdictions are tracked; if the caller is in his home jurisdiction, his service address is charged, and if he is not, the tax is assessed by the area where the call originates. **SEN. MCCARTHY** asked how it would be computed if the call was made from overseas. **Mr. Swanson** advised if the call was made from a military installation, in all likelihood the provider would be AT&T which provided tax-free service to the military; if it was made from Paris, France, the U.S. laws would not matter. **SEN. BOB STORY, SD 12, PARK CITY**, remarked **SEN. RYAN's** question had been about prepaid calling cards whereas this amendment dealt with postpaid calls. He was curious, though, as to who collected the tax assessed on the \$10 calling card mentioned earlier. **Mr. Swanson** explained in Montana, this tax would fall under the telecommunications excise tax since there is no sales tax; in other states, it would be considered a sales tax. **Mr. Everts** commented there was no tax on these cards in Montana. **Mr. Swanson** qualified his remarks by saying if there was a tax with regard to this type of card in existing law, it would apply; this amendment did not add a new tax. **SEN. STORY** felt the amendment was a bill in itself and, having heard from only one phone company, he wondered if **Chuck Evilsizer** had any thoughts on it. **SEN. TOOLE** asked if prepaid cards were covered under this amendment. **Mr. Everts** advised prepaid cards were not covered. **SEN. STORY** invited **Mr. Evilsizer** to comment on the amendment, and he stated the amendment extended the excise tax to some other types of calls, such as pay phones and certain kinds of calling cards. **SEN. STORY** recalled when the telecommunications tax structure was revised, there had been a lot of discussion in the Revenue Oversight Committee about the move from the familiar land line phones to wireless phones and calling cards and how to sort out the different tax jurisdictions, making sure no one was treated unfairly.

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CHAIRMAN JOHNSON felt it was unfair to discuss and attach this amendment without having had a hearing on it, saying if the bill passed, the House of Representatives could add it then.

SEN. RYAN agreed with the chairman and **withdrew his motion TO ADOPT AMENDMENT SB038701.ALH.**

SEN. RYAN asked if **SEN. COBB** was involved in crafting this amendment, and **Mr. Swanson** replied he was, and even though his main concern was the issue addressed in the bill, he did not object to the amendment.

Vote: Motion carried 9-1 with STAPLETON voting no.

ADJOURNMENT

Adjournment: 4:20 P.M.

SEN. ROYAL JOHNSON, Chairman

MARION MOOD, Secretary

RJ/MM

EXHIBIT (ens42aad)